



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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February 2, 2006

The Honorable Cathy McMorris
Chairwoman
Task Force on Improving the National Environmental
Policy Act
Committee on Resources
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chairwoman:

The Associated General Contractors of America (AGC) compliments the Task Force for conducting a comprehensive review of National Environmental Policy Act (NEPA) issues and releasing "Initial Findings and Draft Recommendations" for public comment on December 21, 2005. AGC appreciates the opportunity to comment on the report and requests that the Task Force give all due consideration to these views.

AGC is the largest and oldest national construction trade association in the United States. AGC represents more than 32,000 firms, including 7,000 of America's leading general contractors, and more than 11,000 specialty-contracting firms. More than 13,000 service providers and suppliers are associated with AGC through a nationwide network of chapters. Given AGC members' participation in the construction of federally-funded projects, NEPA implementation is an important issue for the entire construction industry.

AGC agrees with those findings of the Task Force that suggest that productive changes to NEPA or its regulations would improve the process and decrease the amount of litigation through increased certainty and clarity. In comments submitted to the Task Force on November 22, 2005, AGC recommended a number of reforms with the intent to deliver transportation projects in a timelier manner, many of which were incorporated in legislative provisions enacted as part of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59). AGC is pleased that the Task Force recognizes the value of these reforms and broader applicability to the range of NEPA reviews.

Below is a discussion of AGC's previous recommendations for improving NEPA and comments on those proposed by the Task Force.

- Clarify Agency Roles and Responsibilities. AGC recommended that the agency with oversight over a project should be designated as the "lead agency" in the environmental review process responsible for establishing a plan for coordinating public and agency participation. AGC also recommended that the roles and responsibilities of participating agencies be clarified.

AGC strongly supports Task Force Recommendation 6.2 to require codification of CEQ regulation 1501.5 regarding lead agencies. AGC also supports the Task Force recommendation to charge the lead agency with the responsibility to develop a consolidated record for NEPA reviews, EIS development, and other NEPA decisions.

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AGC also supports Task Force Recommendation 6.1 to direct CEQ to promulgate regulations to encourage more consultation with stakeholders. AGC recognizes the benefit of early identification of issues and participation by interested stakeholders. However, AGC cautions against promulgating requirements that are overly burdensome, duplicative, or counterproductive to improving the efficiency of the NEPA process.

- Establish Framework for Determining Range of Alternatives. AGC recommended that a procedural framework for defining a range of alternatives for a project be established, providing opportunities for public and agency input, and result in a definitive and binding decision by the lead agency.

Again, AGC supports Task Force Recommendations 6.1 and 6.2. AGC also supports Task Force Recommendation 5.1 to amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible. AGC recommends making the lead agency the arbiter of what constitutes a “reasonable alternative.” AGC also recommends providing the lead agency the authority to determine the level of detail to be presented in the alternatives analysis.

- Encourage Accountability, Timeliness, and Concurrency in Agency Reviews. AGC recommended procedural requirements to encourage accountability and timeliness in agencies reviews, while accommodating the unique circumstances of each project.

AGC strongly supports Task Force Recommendation 1.2 to amend NEPA to add mandatory timelines for the completion of NEPA documents and consider analyses not concluded by these timeframes to be complete. AGC supports the Task Force’s recommendation that Congress impose an 18-month time limit on the completion of an EIS and a 9-month limit on the completion of an EA. Such a change, if successfully implemented, could reduce the amount of time required to complete the NEPA process for a construction project. Another noteworthy recommendation directs CEQ to prepare regulations that would allow existing state environmental review processes to satisfy NEPA requirements. Further, where practicable, AGC also recommends requiring NEPA reviews to be conducted concurrently, rather than sequentially.

- Promote Early Identification of Concern and Prompt Resolution of Disputes. AGC recommended early identification of issues that could result in substantial delays or the denial of permits and procedures that can be invoked by project sponsors to resolve disputes as a preferred alternative to litigation.

AGC supports Task Force Recommendations 2.1, 3.1, and 6.1 designed to enhance public participation and improve coordination among stakeholders at all levels of government. AGC also supports Task Force Recommendation 7.1 to amend NEPA to create a “NEPA Ombudsman” with decision making authority to resolve conflicts within the NEPA process.

- Establish a Statute of Limitation for Legal Claims. AGC recommended establishing a 180-day statute of limitation on any lawsuits challenging federal approvals under NEPA. A similar deadline was enacted in SAFETEA-LU.

AGC strongly supports the Task Force recommendation to establish a 180-day time period for filing a challenge on a federal action.

- Allow Funding for Resource Agencies. AGC recommended that federal and state agencies be permitted to provide financial assistance to other agencies to expedite their NEPA reviews.

AGC supports Task Force Recommendation 3.2 to direct CEQ to prepare regulations that allow existing state environmental review processes to satisfy NEPA requirements. AGC also supports Task Force Recommendations 9.1, 9.2, and 9.3 to require reports to Congress that would study the amount of duplication and overlap in the federal and state environmental evaluation processes and determine ways to eliminate or minimize this duplication. These efforts would not only expedite the NEPA review process, but reduce the escalating costs of complying with NEPA.

AGC also recommends a voluntary pilot program which permits state agencies to assume responsibility for federal agencies' obligations under NEPA. In addition, AGC recommends a process through which planning decisions can be given standing in the NEPA process. Both recommendations would contribute to reducing duplicative NEPA reviews and analyses and should, at a minimum, be options considered by CEQ in its reports to Congress.

- Allow Consideration of Environmental Benefits. AGC recommended that the environmental benefits of a proposed project be considered as part of the NEPA review, as well as the environmental consequences of not undertaking a proposed project.

AGC supports Task Force Recommendation 5.2 to amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking any action on any proposed project. Moreover, AGC supports the recommendation that CEQ be directed to issue regulations clarifying the type of future actions that are appropriate for consideration under the "cumulative impacts" analysis. AGC agrees that the focus should be on "concrete" proposed actions rather than on actions that are "reasonably foreseeable," as under current law.

AGC members have a considerable interest in the effort to improve the NEPA process through legislative or administrative modifications and applaud the Task Force for its leadership in this endeavor. The NEPA process directly impacts the timely construction of critical infrastructure and the nation's quality of life. AGC reaffirms its commitment to working with the Task Force on implementing productive recommendations for improving NEPA.

Thank you for considering AGC's views.

Sincerely,



Jeffrey D. Shoaf
Senior Executive Director
Government and Public Affairs